

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

MICHAEL GENE GUNN,

Appellant

v.

STATE OF MISSOURI.

Respondent

DOCKET NUMBER WD78003

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 15, 2015

Appeal From:

Circuit Court of Jackson County, MO
The Honorable Charles H. McKenzie, Judge

Appellate Judges:

Division Two
Mark D. Pfeiffer, P.J., Lisa White Hardwick, and James Edward Welsh, JJ.

Attorneys:

Mark Grothoff, Columbia, MO

Counsel for Appellant

Attorneys:

Shaun Mackelprang, Jefferson City, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**MICHAEL GENE GUNN, Appellant, v.
STATE OF MISSOURI, Respondent**

WD78003

Jackson County

Before Division Two Judges: Pfeiffer, P.J., Hardwick, and Welsh, JJ.

Michael Gene Gunn appeals the circuit court's dismissing his Rule 29.15 motion for post-conviction relief as untimely filed. Gunn asserts that his untimely filing should have been excused because his direct appeal counsel failed to notify him when this court issued its mandate on the direct appeal.

Affirmed.

Division Two holds:

Gunn took no reasonable steps to file his post-conviction motion within the time limits. He merely waited and relied on his appellate counsel to tell him when the mandate issued and to fulfill Gunn's responsibility to timely file the motion. Gunn failed to prove that he was prevented from timely filing his post-conviction motion because of the active interference of a third party. The circuit court, therefore, did not clearly err in dismissing Gunn's post-conviction motion as untimely filed.

Opinion by James Edward Welsh, Judge

December 15, 2015

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